

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SAMUEL MENDEZ :  
Plaintiff, :  
VS : CA No. 05-35 ERIE  
PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, ET AL. :  
Defendants, :  
:

PLAINTIFF'S RESPONSE TO DEFENDANTS MARK BAKER,D.O. and  
PRISON HEALTH SERVICES,INC. MOTION TO DISMISS THE  
ORIGINAL CIVIL COMPLAINT FILED IN THIS CASE and THE  
PLAINTIFF'S MOTION TO STRIKE AND DISMISS SAID MOTION  
TO DISMISS FILED BY SAID NAMED DEFENDANTS ON OCT.11,2005  
SUBMITTED IN GOOD FAITH, IN FORMA PAUPERIS .

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AND NOW, comes SAMUEL MENDEZ, in forma pauperis, pursuant  
to legal procedures herein after known as the plaintiff in this  
legal cause of action. The plaintiff respectfully shows the Hon-  
orable Court the following facts.

(1). That the motion to dismiss filed in this case by the  
defendants MARK BAKER,D.O. and PRISON HEALTH SERVICES,INC. is  
null and void and must be striked and dismissed for want of va-  
lidness and for the failure to conform to the statutory mandate  
of 28 U.S.C. Section 1746 which requires that a verification  
be attached to any and all pleadings such as a Motion To Dismiss  
and that such verification be signed by the defendant or party  
so involved. That in this instant case there is no verification

Page(2).

and thus there is no signature by a party to this action, and so it stands to reason that the motion to dismiss filed by the afore named defendants MARK BAKER, D.O. and PRISON HEALTH SERVICES INC. IS MEANINGLESS AND NULL AND VOID.

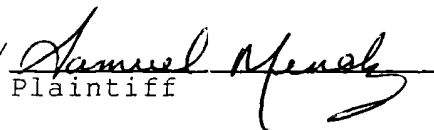
(2). That your plaintiff further contends that this requirement is not waivable and applies to one and all alike.

(3). That the verification requirement in this case has been ignored by trained professionals who are charged with so knowing the mandates pertaining to the the statutory requirements of 28 U.S.C. Section 1746 and thus it is evident that the failure to so attach a verification was not a mere over-sight. Rather was a deliberate act of disregard of the said statutory requirement and for this reasons the said motion to dismiss in question must be stricken and dismissed according to law.

WHEREFORE, plaintiff respectfully requests that the said motion to dismiss filed by the said named defendants be hereby stricken and dismissed forthwith as there is now present in this matter a prima facie circumstance thus warranting denovo action.

Respectfully Submitted/S/

Plaintiff



DATE: 10/31/05

Page(3).

Verification

SAMUEL MENDEZ, under the penalty of perjury and pursuant to 28 U.S.C. Section 1746 do hereby state, that he is the plaintiff named herein, and state's further that he has read this foregoing legal action to The United States District Court For The Western District Of Pennsylvania, and state's that the contents are true and correct.

Executed this 31st. Day Of October 2005

Respectfully Submitted/S/

*Samuel Mendez*  
Plaintiff

PROOF OF SERVICE

SAMUEL MENDEZ, hereby declare under the penalty of perjury, that that he has this day caused to be served upon the parties named below a true and correct copy of this foregoing legal action to the United States District Court For The Western District of Pennsylvania by placing the same into the U.S. Mail addressed as follows.

TO: ELIZABETH M. YANELLI, ESQUIRE  
ONE OXFORD CENTRE, 38th. FLOOR  
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*Samuel Mendez*  
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DATE: 10/31/05